IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-519959-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Norman S. RIDDOCK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1969

Norman S. RIDDOCK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 27 April 1972, an Administarative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's seaman's documents for six months outright plus six months on 18 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Chief Cook on board the SS PINE TREE STATE under authority of the document above captioned, on or about 28 November 1971, Appellant, while said vessel was at sea, wrongfully assaulted a crewmember, Pablo Rosario, by holding a knife and telling him that he would stick it in his stomach.

At the hearing Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence certified extracts fron the voyage records of the SS PINE TREE STATE.

In defense, Appellant offered no evidence.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and third specification had been proved. He then served a written order on Appellant suspending all documents, issued to Appellant, for a period of six months outright plus six months on 18 months' probation.

The entire decision was served on 3 May 1972. Appeal was timely filed on 26 May 1972. No brief in support of appeal was submitted.

FINDINGS OF FACT

On 28 November 1971, Appellant was serving as a Chief Cook on board the SS PINE TREE STATE and acting under authority of his document while the ship was at sea. Because of the disposition to be made in this case no other findings of fact are made.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Because of the disposition of this case the specific allegations of the appeal need not be elaborated.

APPEARANCE: Legal Aid Society of New York, New York, by Felice K. Shea, Esq.

OPINION

I

In his letter of appeal, Appellant raises two questions for consideration. The first is the hearing should be reopened to allow Appellant to be represented by an attorney since he was placed at a grave disadvantage without the services of a lawyer at the hearing.He admits that he waived his right to counsel at the initial hearing, but maintains that such a waiver was not knowingly made. Such an assertion is without merit. the record clearlu established that Appellant was advised of his right to counsel by the Investigating Officer prior to the hearing and again at the hearing by the Administrative Law Judge. After being carefully advised of his rights, Appellant chose to proceed without an attorney; it would be difficult to make out a clearer waiver.

II

The second issue raised by Appellant has more merit, especially, in view of the discontinuous nature of the hearing held in this case. the first hearing convened on 17 February 1972; hhowever, it appeared that there was some question as to whether or not the Appellant, who was not present, had been adequately advised of the date. the hearing was, therefore, adjourned untill March 23. Additional sessions were held on the 23rd and 24th of March with the Appellant in attendance. Then, on 21 April, Appellant failed to appear, so the Judge made findings and closed the hearing. The next day, Appellant appeared at the office of the Judge seeking to have the hearing reopened since he had made a mistake as to the time of the April 21 hearing. This excuse was accepted and the hearing was reconvened on April 24 with all parties present.

At the reconvened session on 24 April, Appellant was informed

by the Judge that the government had rested on the previous session and that Appellant had been found guilty of the third specification alleging the assault on 28 November 1971. At this point, Appellant attempted to make a statement in defense of the charge (R-40 and 41). The statement was confusing and it was unclear as to which of the incidents Appellant was referring. after the Judge had attempted to clarify the situation, Appellant sought to have a written statement entered on the record. Apparently this statement had been made by himself, but it had not been sworn to. In any event, the Investigating Officer objected to introduction of the statement and the judge sustained the objection without a reason or without informing Appellant of the proper procedure for making such a statement. The matter was then dropped without further reference, save a mention by the Judge that he had sustained the objection of the Investigating Officer (R-50). The hearing was then adjourned to allow Appellant an opportunity to serve subpeonas upon two alleged witnesses.

When the hearing opened again on April 27, Appellant did not appear. The Judge then reinstated findings he had made on the 21st and again closed the hearing. In his letter, Appellant asserts that he appeared the following day (April 28) to make excuses and to ask an opportunity to submit matters in his defense. No mention is made of this request by the Administrative Law Judge in his oppoinion or elsewhere. The fact that the hearing was not reopened would not be disturbing, since Appellant had adequate notice that it could proceed without him in absentia, were it not for the failure of the Administrative Law Judge to accept for the record the written statement offered by Appellant.

Although the Judge correctly pointed out to Appellant that his unsworn statement would not have sufficient weight by itself to overcome the prima facie case previously established against him, it should have been accepted for what it was worth. The regulations at 46 CFR 137.20-95 (a) provide for the admission of all relevant material without strict adherence to the rules of evidence. Appellant was not allowed the opportunity to submit such material which could have been considered in mitigation, if for nothing else. At least, the Judge should have allowed Appellant to swear to the statement or to take the stand for an unsworn statement. The fact that Appellant failed to appear at the session held on the 27th of April does not detract from the failure of the Administrative Law Judge to accept Appellant's statement, since Appellant may understandably have felt confused and frustrated by his inability to place matters on the record in his defense. He had no attorney to represent him and should not, therefore, be held to as strict a standard as those who are so represented.

CONCLUSION

In order to allow Appellant to offer such material as he may have, either in defense of the charge or in mitigation, the order of the Administration Law Judge is vacated and the record is remanded with instructions to reopen the hearing and admit for the record any statements or other evidence Appellant may offer.

ORDER

The order of the Adminisstrarive Law Judge dated at New York, New York, on 27 April 1972, is VACATED. The record is remanded for proceedings consistent with this opinion.

C. R. BENDER
Admiiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 21st day of June 1973.

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